COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 31, 1999

JOINT PETITION OF

BELL ATLANTIC CORPORATION

and CASE NO. PUA980031

GTE CORPORATION

For approval of agreement
and plan of merger

FINAL ORDER

On October 2, 1998, Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") (collectively, "Petitioners") filed a joint petition requesting approval, pursuant to § 56-88.1 et seq. of the Code of Virginia, of a transaction that would result in GTE becoming a wholly-owned subsidiary of Bell Atlantic. Bell Atlantic and GTE are the parent companies of Bell-Atlantic Virginia, Inc. ("BA-VA"), and GTE South, Inc. ("GTE South") (collectively, "Companies"), both of which are authorized to provide, and are providing, local exchange and intraLATA toll service in Virginia. Neither Bell Atlantic nor any of its affiliates, including BA-VA, are currently affiliated with GTE or GTE South.

BA-VA, a wholly–owned subsidiary of Bell Atlantic, provides both local and intraLATA toll services throughout much of

Virginia, including Richmond, Hampton Roads, Roanoke and the Virginia portions of the Washington, D.C. metropolitan area. It has approximately 3.4 million access lines in service in Virginia. Petitioner Bell Atlantic provides service in 13 states and the District of Columbia to more than 40 million access lines.

GTE South is a wholly-owned subsidiary of GTE and an incumbent local exchange carrier authorized to provide local exchange and intraLATA toll services throughout portions of Virginia. GTE South currently has approximately 557,000 access lines in service in Virginia. An affiliated company, GTE Communications Corporation ("GTECC", formerly known as GTE Card Services, Inc., d/b/a GTE Long Distance), also provides, or is authorized to provide, long distance, operator, and pre-paid calling card services on a resold basis in Virginia and other states. Petitioner GTE provides service in 28 states to 22 million access lines. Petitioners stated that the combined company would have, based on 1997 pro forma financial analysis, revenues of $53 billion and assets of approximately $96 billion.

Bell Atlantic and GTE have executed an "Agreement and Plan of Merger" ("Agreement") wherein GTE will become a wholly-owned subsidiary of Bell Atlantic. As a result, ultimate control of GTE South will transfer to Bell Atlantic. Control of BA-VA will

remain the same since it will continue to be a wholly-owned subsidiary of Bell Atlantic.

Petitioners state that, while the merger will change the identity of the corporation ultimately owning GTE South, it will not involve any immediate change in the manner in which either GTE South or BA-VA provides services to customers. BA-VA and GTE South will continue to provide service as separate legal entities and plan to continue to operate under their respective alternative regulatory plans, approved in Case No. PUC930036.

Petitioners' application represents that the merger will not jeopardize the provision of adequate service to the public at just and reasonable rates or adversely affect the Commission's authority over such rates and service. Bell Atlantic and GTE state that the merger will have no adverse effect on competition in Virginia. They say the combination of Bell Atlantic and GTE will position the companies and their affiliates to provide a complete array of facilities-based voice, data, and Internet service in competition with other providers more quickly than would otherwise be possible.

Petitioners state that the operations of GTECC, a reseller of long distance service in Virginia, will continue until the time the merger is consummated. They advise that if Bell Atlantic has not obtained permission under Section 271 of the Telecommunications Act of 1996 to provide interLATA long

distance service in Virginia by that time, the combined company will request any necessary transitional relief from the Federal Communications Commission (the "FCC"). Such relief will be required to continue this service, since Bell Atlantic and its affiliates are, by law, prohibited from providing interLATA services.

Petitioners state they wish to merge because together they can better serve existing and new customers than either company could alone in the rapidly changing competitive marketplace. In addition, each company wants to be a fully integrated telecommunications service provider able to offer residential and business customers local and long distance voice, data, video, and wireless services. Petitioners indicate that their merger will create more facilities-based competition in the long distance market.

Petitioners state that the combined company will be able, nationally, to reduce overall expenses by more than $2 billion within three years of closing the merger through such means as greater purchasing power, the elimination of redundant systems, and reduced corporate overheads. These savings are said to help contain cost pressures across the combined company, freeing resources for investing in new services, enhancing service quality and competing more effectively against other companies that have recently merged. The petition does not quantify the

amount of such savings attributable to the Virginia jurisdiction, nor propose the distribution of any savings among customers.

Bell Atlantic and GTE claim other benefits of the merger, including that the increased financial strength and stability of the combined company, will enable it to better preserve and advance universal service in Virginia.

Petitioners represent that the merger, which will eliminate any potential competition between GTE South and BA-VA in each other's territory, will have no adverse effect on competition in the local exchange market. They say that, even without competition between BA-VA and GTE South, dozens of competitors remain in the local exchange market. They claim that the loss of one potential competitor in this instance is not competitively significant and that the advantages the merger offers both companies will outweigh any loss of potential competition from one against the other.

By law, the Commission has 60 days in which to review a merger application such as the instant case, a period that may be extended by no more than an additional 120 days. On October 23, 1998, the Commission issued an order that extended the period of review, directed Petitioners to publish notice of the petition, and provided an opportunity for public comments and requests for hearing. The dates for providing notice,

comments, and requests for hearing were amended by Commission order entered on November 20, 1998.

Numerous public comments were filed regarding the merger. Most of the comments favored the merger. Many who wrote in support of the merger were GTE South customers who apparently believed (or hoped) that the merger would result in their receiving BA-VA rates and service. Other comments opposed the merger for various reasons. During the hearing, the Commission heard from a number of public witnesses, including local officials, who urged our approval of the petition, hoping that it would enhance economic development in their areas of the state. Other public witnesses requested we reject the merger on grounds that the companies had not been fair in dealing with potential competitors.

On January 7, 1999, MCI WorldCom, Inc. ("MCIW"), Sprint Communications Company, LP ("Sprint"), AT&T Communications of Virginia, Inc.("AT&T"), and Starpower Communications, LLC ("Starpower"), filed comments on the joint petition. Sprint, AT&T and MCIW each requested that we deny the petition. MCIW stated that should we choose to grant the petition, we should impose conditions upon our approval. Each of these parties asked for public hearings.

In its comments, Starpower requested that the Commission deny the petition or that it institute an investigation into the

proposed merger and assign the proceeding to a hearing examiner for purposes of hearing.

On February 12, 1999, the Staff of the State Corporation Commission filed a motion requesting the Commission to require the Petitioners to supplement their application, to find the application to be incomplete until supplemented, and to suspend the procedural schedule until such supplementation be made. Staff also requested the Commission to direct the Petitioners to state in response to its motion whether § 56-90 permits the Commission to approve a merger conditionally. The Staff requested that the Commission require Petitioners to supplement the application to detail their plans for obtaining the necessary FCC approval for continuing the cross LATA local calling plan ("LCP") routes currently in service in GTE South's territory. The motion argued that without such approval, GTE South's services in Virginia would be impaired or jeopardized because following the merger it would be affiliated with Bell Atlantic and prohibited from providing interLATA services.

Pursuant to a February 19, 1999, order of the Commission, the Petitioners, AT&T, Sprint and MCIW filed responses to the Staff's Motion. The Petitioners requested that the Commission approve their merger subject to the condition that the ability of GTE customers to be able to make interLATA local calls

pursuant to the LCP be preserved, and otherwise to deny the Staff's motion.

AT&T joined the Staff in recommending that the proceeding be suspended until the FCC can act on Bell Atlantic and GTE's request for interLATA relief for GTE South's LCP. AT&T also requested that the Commission not consider undocumented plans for expanded local calling between adjacent exchanges that had earlier been publicly announced by BA-VA and GTE South, or if such plans were to be considered, that Petitioners be required to amend their petition to include details of such plans and provide an opportunity for hearing on the amended petition.

Sprint requested that the Commission dismiss the petition as filed and not start the statutory deadline until Petitioners file a completed petition which addresses the local calling plan, provides evidence to carry their burden of proof, and complies with the Commission guidelines for filing merger applications.[1]

As directed by Commission order, the Staff filed the report of its investigation of the application on February 26, 1999. The report contended that the Petitioners had not met their burden of proof to show that the proposed merger would not impair or jeopardize service to customers of their Virginia

[1] At the conclusion of the hearing, the Commission took the Staff's motion, and all other pending motions, under advisement. This Order renders those motions moot.

subsidiaries, BA-VA and GTE South; therefore, the merger should not be approved as filed. The report described the Staff's efforts to secure information from the Petitioners that would enable it to evaluate whether the proposed merger would jeopardize or impair adequate service at just and reasonable rates. The report indicated that most of Petitioners' responses to the Staff's inquiries were vague and non-specific. Further, the Staff reported that although the Petitioners indicated that their combination was expected to result in $2 billion in expense savings and $.5 billion in capital expense savings, Petitioners were unable or unwilling to disclose the extent to which these savings would be realized in Virginia, or how such cost cutting might affect the adequacy of service provided by BA-VA and GTE South in the Commonwealth. The report advised, however, that information similar to that which was sought by the Staff was presented by another GTE affiliate to the Illinois Commerce Commission.

As did its motion, the Staff report advised that GTE South currently provides optional local calling plans in certain areas that allow for local calling across LATA boundaries. Additionally, as noted earlier, an affiliate of GTE South provides interLATA long distance service in Virginia. Bell Atlantic is, by law, presently prohibited from providing any interLATA services, and thus it is questionable whether GTE

South could, following a merger, continue to provide these services.

The report outlined the Staff's concerns about the impact of the merger on the state of competition in Virginia. The Staff disagreed with Petitioners' claim that their combination would be ". . . not competitively significant." The report stated that incumbent local exchange companies maintain a 99.1% market share in Virginia, based upon the number of access lines, and that each such company, including BA-VA and GTE South, retains effectively complete market power. The Staff concluded that the merger would be anti-competitive in Virginia. The elimination of key potential competitors in the combination of Virginia's largest and next largest incumbent carriers ". . . poses a significant threat to the competitive market, the market that will be expected to constrain rates in the future, keeping rates just and reasonable." The report stated that control of about 90% of all access lines in Virginia would fall to Bell Atlantic.

The report noted the Staff's serious concerns about the disparate quality of service currently being provided by BA-VA and GTE South, and the Petitioners announced intentions to combine the "best practices" of each company with regard to service quality provision. The Staff's concern is that the Petitioners had not yet decided which practices were "best," and

so the Staff could not be assured that the quality of service would not be adversely affected. A "best" practice from a corporate viewpoint might not be "best" for customers. In any event, Petitioners could not, or did not, disclose their criteria for determining what practices were "best" and would be implemented upon a merger. Thus, the Staff could not find assurance that general service quality would not be impaired.

Although the report concluded that Petitioners had not met their burden of proof, the Staff stated that, if the Commission chose to proceed with the petition without having the Petitioners correct the deficiencies outlined in its report, approval should be subject to a number of conditions designed to address those deficiencies and assure that ". . . quality service at just and reasonable rates not be impaired or jeopardized[.]"

Pursuant to Commission order, responses to the Staff Report were filed on March 8, 1999, by counsel for Petitioners, AT&T, Sprint, and MCIW.

The Petitioners requested the Commission approve the merger and reject all but one of the conditions set forth in the Staff Report. In their legal argument, Petitioners concluded that the remaining conditions recommended by the Staff ". . . fail the relevant statutory standard under Section 56-90 of Virginia's Utility Transfers Act[.]" Petitioners further argued

that in the absence of any adverse impact on rates or service that would result from a merger, the Commission must approve the merger without conditions. The Petitioners did support imposition of the condition that the interLATA local calling routes of GTE South be maintained.

Petitioners argued that the appropriate standard for our review of their petition is whether the merger will have an adverse impact only on the rates and services of GTE South, since it is the company whose control is being transferred. According to Petitioners, no conditions whatsoever could legally be imposed on BA-VA, as it is neither acquiring nor disposing of control of any utility assets.

Petitioners contended that the Companies' alternative regulatory plans govern their rates for service and would not be affected by the merger. Under the GTE South plan, earnings are periodically reviewed and refunds of excessive earnings may be ordered.[2] BA-VA's plan, however, caps the price of the company's basic and discretionary services, subject to adjustment as permitted by the plan. BA-VA's earnings are not subject to refund as are those of GTE South. BA-VA suggested that its plan could only be changed in accordance with § 56-235.5 D of the Code, and may not be effectively modified in the context of this

[2] We note that the GTE South plan permits only refunds and not adjustment of rates for basic services unless the Company files a request for a rate adjustment.

Transfers Act case, as it maintains the Staff's recommended conditions would do.

In contrast to the Petitioners' response to the Staff's report, AT&T contended that the proposed merger would have anti-competitive effects in Virginia and that the Staff had correctly concluded that such effects would be in violation of Va. Code § 56-90. AT&T supported the Staff's conclusion that the Petitioners had failed to meet their burden of proof. AT&T contended that additional "market-opening actions" are needed in any proposal to approve this merger, but recommended denial of the Joint Petition because the record would not support its approval, even with conditions. Despite this assertion, AT&T proposed several conditions for our consideration.

MCIW found the Staff's conclusion that the merger will be anti-competitive to be correct but its recommended conditions inadequate to address the problem. MCIW suggested other conditions would foster competition and should be adopted by the Commission as a "second-best alternative" to rejection of the anticompetitive merger.

Like AT&T and MCIW, Sprint recommended the Commission either dismiss or suspend the petition, rather than adopt the Staff-recommended alternative of conditional approval. Sprint agreed with the Staff that the merger would potentially impair or jeopardize adequate service to Virginia customers at just and

reasonable rates. Like MCIW, Sprint did not believe the Staff's conditions were an adequate alternative and that the application is legally deficient because it is incomplete. Sprint argued the Petitioners have not met their burden of proof to demonstrate that the merger will not jeopardize service. At a minimum, Sprint said, the Commission should suspend the proceeding until a complete application is filed. Finally, Sprint contested the lawful authority of the Commission to approve a petition with conditions.

On March 4, 1999, the Commission entered an order directing any party that wished to present evidence in the proceeding to file a notice of its desire to do so on or before March 12, 1999. Such notice was to be accompanied with an explanation of the necessity for receipt of testimony in lieu of argument of counsel on the pending issues. The order indicated the Commission's concern that the question before it was whether the petition satisfied the legal requirement for approval under the Code of Virginia.

On March 12, 1999, both Sprint and AT&T filed notices of intent to present witnesses. Sprint proposed to call Dr. John Woodbury as its witness, while AT&T indicated a desire to call G. Blaine Darrah III as its witness. Both witnesses were expected to discuss potential adverse economic consequences to Virginia telephone customers upon the approval of the petition.

The Petitioners filed a joint notice stating that the issues were legal in nature and did not intend to present any direct testimony but would reserve the right to put on witnesses, if necessary, to rebut any other testimony that might be received. This joint notice also requested that should any other party be allowed to present evidence that such testimony should be pre-filed and that Petitioners should be allowed to rebut the testimony orally during the hearing. The Commission entered an order on March 15, 1999, directing pre-filing of testimony and Sprint and AT&T submitted their witness' testimonies on March 19, 1999.[3]

The matter came for hearing on March 24, 1999. The Commission heard testimony from a dozen public witnesses and from Dr. Woodbury and Mr. Darrah. The Petitioners called no witnesses. The Petition and the Staff Report were received without cross examination. The Commission heard argument of counsel.

NOW THE COMMISSION, having considered the Petition, the pleadings, the record, the Staff's report and the comments and

[3] The day prior to the hearing, AT&T filed a motion that asked that we require Petitioners to identify their witnesses, as Petitioners had refused to agree to do so on the grounds, stated one day earlier, that it had not yet determined who such witnesses might be. We did not rule on this motion prior to the hearing; therefore, Petitioners, could and may have had witnesses available in the courtroom during the hearing standing ready to rebut the testimony of Dr. Woodbury and Mr. Darrah. But, Petitioners did not call any witnesses to rebut this testimony or support their application.

responses thereto, the Protestant's evidence and argument elicited at hearing, together with the applicable statutes and rules, is of the opinion and finds that the Petition should be disapproved and dismissed without prejudice to Petitioners to refile, as directed below. We are unable to find in the record evidence or information sufficient to enable us to meet the statutory standard of Code § 56-90 that we ". . . be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition[.]" We make no finding that rates or services will be impaired by the merger but simply reiterate that the state of the record prevents our conclusion that adequate service at just and reasonable rates will not be impaired or jeopardized.[4]

We received many letters from citizens and public officials concerning this application, most of which advocated approval of the merger. The authors of these letters, and many of the public witnesses at the hearing, appeared to believe that the merger would bring reduced rates or enhanced services to their

[4] In so stating, however, we reject the Petitioners' theories that their filing shifted the burden of proof to the Staff or others and that their alternative regulatory plans *alone,* or in concert with the Commission's other statutory authority, provide assurance that "adequate service to the public at just and reasonable rates will not be impaired or jeopardized[.]" Irrespective of the plan of regulation of any company, any approval of a transfer of utility assets or control of a telephone company requires evidence or information that meets the standard set out in Code § 56-90. The record here does not meet that standard, though Petitioners were on notice as to whether they had carried their burden of proof and had opportunity to submit evidence right up to, and including the day of, the hearing and did not avail themselves of it.

areas of the state. We appreciate their hopes and desires. We cannot, however, base our decision only on these presentations. Moreover, while reductions in rates and improvements in service would be beneficial, they are not necessarily required prerequisites to our approval. Rather, our role is to be protective of rates and service quality that should already be in place. Before the Commission can approve a petition for merger it must be "satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition[.]"

As we have stated, the record before us does not provide a basis to support the required finding. Petitioners filed an application, unsupported by testimony or economic studies or analysis, which simply declared that its approval would not impair rates or services. Petitioners did not at any time during the proceedings supplement their bare application with testimony or analysis. Their responses to our Staff's inquiries were reported to be unsatisfactory, leading our Staff to conclude that the burden of proof had not been met. In the face of the Staff report, Petitioners still did not come forth to supply evidence or information that would justify our approval of their petition. Petitioners simply have not provided evidence or information sufficient to show how they will assure the continuation of adequate service to the public at just and

reasonable rates if they are allowed to combine. The "record," such as it is in support of the petition, consists almost entirely of argument of counsel.

We expect Petitioners to refile their application and will direct the Petitioners, when they do so, to include as a part of their filing the information set out below, which we find necessary for our consideration of the petition. Of course, Petitioners should also submit any other information necessary to support their application:

(1) Petitioners must provide information to the Commission that sets out expected costs and savings attributable to the merger, for both BA-VA and GTE South. [5] Section 56-90 of the Code requires the Commission to be satisfied before ". . . granting the prayer of the petition . . ." that ". . . adequate service to the public at just and reasonable rates will not be impaired or jeopardized[.]" We find that, since both BA-VA and GTE South provide service in Virginia, we must be satisfied that neither BA-VA's, nor GTE South's, ability to provide such

[5] The Petitioners' filing shall include an analysis that details total projected merger costs and savings at a corporate level, by year, through the time period in which projected net merger-related savings are fully realized. All assumptions used in the Petitioners' costs and savings projections shall be fully explained. The annual projected costs and savings shall be allocated to a Virginia jurisdictional level, and include a separation of competitive and intrastate tariffed services for both BA-VA and GTE South. Detailed support and explanations of all allocations shall also be filed. According to the Staff report, similar information has been presented in at least one other state.

service at just and reasonable rates will be impaired or jeopardized. Therefore, we direct the Petitioners to provide the information set out in this paragraph with respect to both BA-VA and GTE South.[6]

(2) We direct Petitioners to provide evidence or information that the current level of service provided to customers in Virginia by BA-VA and by GTE South will be maintained and how the Companies intend to enhance their level of service, if there are any such plans.

(3) We observe that many citizens appear to have mistakenly believed that the merger would meld the operations of the two companies, perhaps immediately causing their service to become enhanced, or their rates to be reduced, or both. During the hearing, counsel for BA-VA admitted that the Companies could have better explained their intentions to the public. We direct the Petitioners to provide to us and to endeavor to provide to the public a more complete answer to questions such as how long they intend to continue to operate separately; what they believe will happen to rates and services should the merger be approved; and whether any service improvements are planned. The Code requires, and the Companies' customers in Virginia deserve, no

[6] Contrary to Petitioners' contention, the statute does not limit us, in deciding whether to grant the prayer of the petition, to consideration of the effect such action would have only on GTE South. Rather, the statute requires that we consider the effects on both BA-VA and GTE South.

less than disclosure of the Petitioners' plans to provide adequate service at just and reasonable rates.

(4) Petitioners must provide to the Commission copies of their filed requests for regulatory approvals from the Federal Communications Commission to permit the continuation of the interLATA local calling routes currently offered by GTE South to its customers in Virginia and to permit the continuation of the interLATA interexchange service currently offered by GTE Communications Corporation, d/b/a GTE Long Distance to its customers in Virginia.

(5) The FCC recently found internet traffic to be interstate in nature. We direct Petitioners to address the impact, if any, of this FCC pronouncement on their proposed merger and the services now offered in Virginia by BA-VA and GTE South.

(6) Finally, Petitioners shall address the effect their proposed merger will have on telecommunications competition in Virginia and how any effect on competition will affect their ability to provide adequate service at just and reasonable rates.

We find that the information and analysis designated above is necessary as part of Petitioners' filing for us to meet our statutory duty, applicable to the transfer of any telephone company or any utility assets, to find that "adequate service to

the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition[.]"

The law requires us to make the above finding, and no other. Transfers of utility assets or control may have powerful potential effects on economic development, regional competitiveness, the plans of others to enter the market, and many other items. These are important effects to be sure, but our consideration of them is at best secondary, and may well be extraneous, to the duty commanded by the Code—to be satisfied that Virginia citizens and businesses will receive quality service at just and reasonable rates. We cannot make that finding on this record.

If the petition is refiled, as we believe will occur, we will endeavor to act expeditiously upon it. We advise the Petitioners, however, that our ability to so act will substantially depend upon their filing complete and accurate information, as directed herein, and their full and cooperative response to interested parties and to our Staff in its efforts to fulfill the investigative obligations placed upon it by such filing.

Accordingly, IT IS ORDERED THAT:

(1) The Petition is disapproved, without prejudice to the Petitioners to refile.

(2) Petitioners shall, upon refiling their application, include the information and analysis set out above.

(3) There being nothing further to come before the Commission, this matter is dismissed and the papers transferred to the file for ended causes.